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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/959,053	12/02/2010	Jens Leister	022862-1369	4314

34044 7590 02/01/2017
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EXAMINER

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ART UNIT	PAPER NUMBER
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3752

NOTIFICATION DATE	DELIVERY MODE
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02/01/2017

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JENS LEISTER, MARCO BEIER,
PIERRE MARIE ROCHAS, and OLIVER RAIN

Appeal 2015-003271
Application 12/959,053
Technology Center 3700

Before EDWARD A. BROWN, MICHAEL L. WOODS, and
ARTHUR M. PESLAK, *Administrative Patent Judges*.

PESLAK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Jens Leister et al. (“Appellants”) appeal under 35 U.S.C. § 134(a) from the Examiner’s decision rejecting claims 1, 2, 4, 7, 10, 12, 14–17, and 19–21.¹ We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

¹ Appellants submit the real party in interest is Robert Bosch GmbH.
Appeal Br. 2.

THE CLAIMED SUBJECT MATTER

Claim 1, reproduced below, is illustrative of the claimed subject matter.

1. An electromagnetic valve, comprising: a casing (1, 2), an electromagnet (24, 25) formed of a yoke (24) and an electromagnetic coil (25) housed in an opening of the yoke, and an armature (22) in one or more parts, the yoke (24) opening towards the armature (22), characterized in that an abutment disk (28) is provided between on one hand a transverse face of the armature (22), said face of the armature (22) being turned towards the yoke (24), and on the other hand a transverse face of the yoke (24), the abutment disk (28) being made of a magnetized or magnetizable material, and in that a bearing surface of the abutment disk (28) is reduced by at least two orifices (34, 35, 36), wherein at least one of the at least two orifices (36) has a different size than the remaining orifices (34, 35).

REJECTION

Claims 1, 2, 4, 7, 10, 12, 14–17, and 19–21 are rejected under 35 U.S.C. § 102(b) as anticipated by Oyama (US 6,380,832 B2, issued April 30, 2002).

DISCUSSION

Appellants appeal only the rejection of claims 14 and 17, each depending from claim 1. Notice of Appeal (filed August 4, 2014); Appeal Br. 11–12 (Claims App.). Appellants did not cancel the remaining rejected claims, that is, claims 1, 2, 4, 7, 10, 12, 15, 16, and 19–21. *Id.* at 10–12. The Examiner did not withdraw the rejection of these claims in the Answer. Ans. 2–5. As Appellants do not address the rejection of claims 1, 2, 4, 7, 10,

12, 15, 16, and 19–21 under 35 U.S.C. § 102(b), Appellants waived any argument of error, and we summarily sustain the rejection of these claims. *See* Appeal Br. 5–9; *Hyatt v. Dudas*, 551 F.3d 1307, 1314 (Fed. Cir. 2008) (explaining that summary affirmance without consideration of the substantive merits is appropriate where an appellant fails to contest a ground of rejection); *see also* 37 C.F.R. § 41.31(c) (“An appeal, when taken, is presumed to be taken from the rejection of all claims under rejection unless cancelled by an amendment filed by the applicant and entered by the Office.”); 37 C.F.R. § 41.39(a)(1) (“An examiner’s answer is deemed to incorporate all of the grounds of rejection set forth in the Office action from which the appeal is taken . . . unless the examiner’s answer expressly indicates that a ground of rejection has been withdrawn.”).

Claim 14 recites “the bearing surface of the abutment disk (28) is further reduced by a central drill hole (36).” Appeal Br. 11 (Claims App.). The Examiner finds that Oyama discloses all the limitations of claims 1 and 14. Final Act. 3–4.

Appellants contend that Oyama discloses an abutment disc having a single annular orifice in disk 23 and a through hole centrally located in the disk. Appeal Br. 8 (citing Oyama Figs. 4A and 4B.) Appellants note that claim 1 recites a bearing surface of the abutment disk “is reduced by at least two orifices, wherein at least one of the at least two orifices has a different size than the remaining orifices,” and claim 14 requires that the bearing surface of the abutment disk is “further reduced by a central drill hole.” *Id.* Appellants argue that Oyama does not anticipate claim 14 because its abutment disk “does not have two orifices *and* a central drill hole.” *Id.*

The Examiner responds that claim 14 “does not define three orifices (two orifices and a central hole).” Ans. 4. The Examiner refers to Appellants’ Figure 5b which discloses a plurality of orifices 34, all of the same size, and a central drill hole 36 of a larger diameter than the orifices. *Id.* The Examiner uses Figure 5B as the basis to conclude that claim 1 “treat[s] central drill hole 36 as one of the ‘at least two orifices’” recited in claim 1. *Id.* The Examiner then construes claim 14 “as further limiting one of the two orifices 34 and 36 being a central drill hole.” *Id.* Based on this construction of claim 14, the Examiner finds that Oyama discloses “an abutment disk 23 being reduced by at least two orifices (one annular orifice adjacent recess 21 and another orifice adjacent hole 22). The orifice adjacent hole 22 is a central drill hole.” *Id.* For the following reasons, we do not sustain the rejection of claim 14.

Claim 1 recites that “a bearing surface of the abutment disk (28) is *reduced* by at least two orifices.” Claim 14 recites that “the bearing surface . . . is *further reduced* by a central drill hole.” The Examiner’s construction of claim 14 ignores the italicized language that the central drill hole must reduce the bearing surface further from the reduction in the bearing surface due to the at least two orifices recited in claim 1. Oyama discloses two orifices of different sizes in abutment disk 23. However, the Examiner has not directed us to any disclosure in Oyama of an additional central drill hole that *further reduces* the bearing surface. We, thus, do not sustain the rejection of claim 14.

Claim 17 recites “the at least two orifices (34, 35, 36) are disposed symmetrically on the abutment disk (28).” Appeal Br. 12 (Claims App.).

The Examiner finds that Oyama discloses all the limitations of claims 1 and 17. Final Act. 3–4.

Appellants argue that claim 17 does not read on Oyama’s abutment disc because the differing shapes of Oyama’s annular recess 21 and center hole 22 and their distinct locations on the disk are not disposed symmetrically on disk 23. Appeal Br. 9. The Examiner responds that Oyama’s center hole 22 and annular recess 23 are symmetrical about the center of the disk. Ans. 5.

Figure 4A of Oyama discloses center hole 22 and an annular recess 21 disposed concentrically around center hole 21. Oyama, Fig. 4A. We agree with the Examiner that both of these orifices in Oyama’s abutment disk are disposed symmetrically on the abutment disk about the center and, thus, sustain the rejection of claim 17.

DECISION

The Examiner’s decision rejecting claims 1, 2, 4, 7, 10, 12, and 15–17 is affirmed.

The Examiner’s decision rejecting claim 14 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART